



Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • [www.deq.mt.gov](http://www.deq.mt.gov)

March 15, 2006

Honorable Brian Schweitzer  
Governor of Montana  
Capitol Station  
Helena, Montana 59620

Re: BNSF CECRA Facilities

Dear Governor Schweitzer:

As you know, the BNSF Railway Company (BNSF) is a major polluter in the State of Montana. The company is responsible for almost one-tenth of the sites on the state Superfund (CECRA) list. Most of these sites have been listed since the mid-1980s and none of them have been adequately remediated in the 25 years since the pollution issues were identified. This is a terrible legacy for BNSF to leave with Montana, and the only way to correct this is to clean up these sites as quickly as possible. Unfortunately, these sites have languished while BNSF has engaged in legal and technical squabbles that have delayed clean up activities. That will soon change.

Montana has issues with BNSF statewide, but one of BNSF's most egregious contamination sites is in Livingston. As you know, the Consent Decree directed my department, the Montana Department of Environmental Quality (DEQ), to enter into negotiations with BNSF to fully implement the selected remedy at this site. Those negotiations resulted in the Statement of Work (SOW) for Spring 2005 Activities. Under the Spring SOW, BNSF is required to conduct certain work required in the Record of Decision. However, BNSF's actions on these tasks indicate that BNSF has no intention of actually completing the work in a reasonable or timely manner.

BNSF has impeded progress at this and other sites, bogged down negotiations with technical issues, and failed to respond to DEQ's requests and requirements in a timely manner. This is not acceptable. I sent BNSF a letter on December 6, 2005, outlining how DEQ expected to deal with BNSF on these sites. There has been no additional progress since that letter. As a result of BNSF's obstreperous behavior, DEQ feels that any further negotiations with BNSF related to the Livingston site would be a waste of valuable state time and resources.

Therefore, I recommend that you direct DEQ to terminate any further negotiations related to implementation of the selected remedy and to take over the cleanup of the

Governor Schweitzer  
March 15, 2006  
Page 2 of 2

Livingston site. This includes activities under the Spring SOW as well as all other required remedial activities. BNSF's obligation will be to timely pay all the bills.

At an Environmental Quality Council meeting on January 26, 2006, BNSF indicated that it has an "open checkbook" for addressing sites in Montana. We have a right to expect BNSF to use it for the good of the state. If BNSF fails to pay all remedial action costs in a timely manner, we also recommend that you direct DEQ to take further enforcement against BNSF.

The Livingston site is one of many problems facing BNSF in Montana. Further, we recommend that you direct DEQ to take a global look at other BNSF sites and assess why things are moving so slowly. It may be necessary for the state to take further actions to remove financial and other roadblocks that prevent significant and timely progress towards cleanup and closure of other BNSF sites in the state. Finally, if BNSF continues to act in an unacceptable fashion at the other CECRA sites in Montana, we recommend that you direct DEQ to take over cleanup of those sites as well and bill BNSF for the costs incurred.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard H. Oppen", with a long horizontal flourish extending to the right.

Richard H. Oppen  
Director